ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning Deployment of	)	
Advanced Telecommunications	)	
Capability to All Americans in a Reasonable	)	
And Timely Fashion, and Possible Steps	)	CC Docket No. 98-146
To Accelerate Such Deployment Pursuant	)	
To Section 706 of the Telecommunications	)	
Act of 1996	)	

COMMENTS OF BELLSOUTH CORPORATION

BELLSOUTH CORPORATION

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SUMMARY

In this proceeding the Commission seeks comments regarding the availability of advanced telecommunications capabilities to Americans. This request is pursuant to the Congress' mandate to ensure that advanced services are being deployed to all Americans in a reasonable and timely manner. The Commission summarized much of the expansion activity occurring in advanced services in Appendix A of its Notice of Inquiry. The Commission also expects to obtain specific deployment information via its pending local and broadband reporting requirements proceeding. BellSouth will fully comply with this reporting requirement and thus will not repeat that data in this filing.

Instead, BellSouth provides comments on issues that the Commission should focus on in the future to stimulate competition among advanced services providers. While advanced services are being deployed as fast as possible under the current regulatory requirements, deployment could be enhanced by reduction of regulation and the disparity that exists between ILECs and cable companies. Reduced regulation would allow these competitors to compete on equal footing and create a market atmosphere that will benefit consumers. Thus, bringing ILECs and cable companies into regulatory parity will only serve to further the Commission's goal of rapid advanced services deployment. Accordingly, the Commission should work to achieve deregulation and market competition in the future.

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COMMENTS OF BELLSOUTH CORPORATION

BellSouth Corporation, for itself and its affiliated companies (collectively "BellSouth"), submits the following comments in response to the *Notice of Inquiry* ("*NOI*") released in the above-captioned proceeding.[1]

I. Introduction

Pursuant to Congress' mandate, the Commission must evaluate the advanced services market and determine whether such services are being deployed to all Americans in a reasonable and timely manner. This *NOI* is the Commission's second inquiry into the deployment of advanced services. In its first inquiry, the Commission determined that overall advanced services capability was being deployed reasonably and timely. In its comments and reply comments in that proceeding, BellSouth presented significant analysis of the advanced services

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[1] *In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant To Section 706 of the Telecommunications Act of 1996*, CC Dkt. No. 98-146, *Notice of Inquiry*, FCC 00-57 (rel. Feb. 18, 2000) ("*NOI*").

market demonstrating the different capabilities of providing advanced services and the numerous market participants. These capabilities are far more extensive today than they were a year ago. Indeed, the market has expanded rapidly.

For example, incumbent local exchange carriers ("ILECs") have aggressively moved to deploy services that extend high-bandwidth capability to the home and business. Satellite operators currently offer nationwide high-speed Internet access. Cable companies (including AT&T) continue to upgrade their ubiquitous cable networks and are offering consumers high-speed cable modems. Competitive local exchange carriers ("CLECs") continue to provide high-speed data services using their extensive fiber networks or by purchasing unbundled network elements from ILECs and installing their own digital subscriber line ("DSL") equipment. Terrestrial wireless technologies also are being deployed to provide broadband capability in a number of spectrum bands such as 24 and 38 GHz. Other terrestrial wireless providers, including local multipoint distribution service ("LMDS") providers, multipoint distribution service ("MDS") providers and even digital television broadcasters, are fast becoming full-fledged providers of advanced services. For competitive assessment purposes, these many solutions for advanced telecommunications capability over the "final mile" form an advanced services market that is intensely competitive. Numerous providers have jumpstarted deployment of advanced services to ensure that such services are reaching consumers in a reasonable and timely basis, however, regulatory inequities among competitors will only serve to impede competitive growth in the future.

BellSouth for example has made ADSL available in thirty major markets in 1999. By the end of 1999, its ADSL services were available to approximately seven million telephone lines that meet the technical specifications. BellSouth plans to have over eleven million lines capable

of delivering service at the end of 2000. That is not to say that competitive inequities present in the current regulatory paradigm will allow full competitive growth to continue as it should. The Internet is revolutionizing not only the way people do business, but also the way people live. No one can credibly argue against its past and future impact on the economy. The Commission should therefore do everything in its power to ensure that deployment is not stifled by backward looking regulatory policies. The economy demands that scaled back regulation and the free market should control. This begins by making sure that all competitors are playing on a level field. As Chairman Kennard has said "I don't pick winners. I don't pick losers. Instead, I make sure that the playing field is level and the goalposts are the same height and that the rules of the game keep up with changing times."[2] The Commission should heed Chairman Kennard's comments in the area of advanced services.

Finally, the Commission has already summarized much of the expansion activity occurring in advanced services in Appendix A of the *NOI*. The Commission also expects to obtain specific deployment information via its pending local and broadband reporting requirements proceeding.[3] BellSouth will fully comply with this reporting requirement and thus will not repeat that data in this filing.

II. Concerns Regarding the Commission's Policy Positions toward Advanced Services Capabilities

In the *NOI* the Commission asks a multitude of questions aimed at addressing Congress' concern:

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[2] Legg Mason Telecom Investment Precursors Workshop, dated March 12, 1998, remarks of Commission Chairman William Kennard.

[3] *In the Matter of Local Competition and Broadband Reporting*, CC Docket No. 99-301, *Notice of Proposed Rulemaking*, FCC 99-283, released October 22, 1999.

Whether advanced services capability is being deployed to all Americans in a reasonable and timely manner?

If not, are there any actions that will accelerate such deployment?

As briefly summarized above, a wide range of competitors are deploying a variety of technologies as fast as, or faster than, Congress could have envisioned in 1996. This deployment is occurring in backbone as well as last mile facilities. Moreover, while deployment is obviously taking place faster in more densely populated areas, the market is carrying advanced services capabilities to rural areas as well. Of course, competition among the various providers and full benefit to consumers could be occurring even faster if some competitors were not hobbled with more stringent regulatory obligations. With these issues in mind, BellSouth limits its specific comments to four areas of interest that the Commission should be mindful of in its policy decisions regarding advanced services – the disparate regulatory treatment of advanced services providers, benchmarking methods, and universal service.

A. Regulatory Parity

Although advanced services deployment is occurring on a timely basis, future deployment will best occur through equal competition among advanced service providers. Accordingly, the Commission can take steps to further encourage competition and enhance deployment. Left unchecked, regulatory disparity will impede ILEC deployment of ADSL while cable providers are unencumbered by regulatory constraints in their deployment of cable modems. For example, BellSouth was one of the first competitors to deploy DSL technology. With a long history of serving residential, rural and small business customers, BellSouth and other ILECs are well-positioned to provide such advanced services to all of these segments. But providing widescale broadband capability is a considerable feat, even for an ILEC. It requires

developing technologies, retrofitting loops or laying new networks, investing in costly new equipment and training service personnel. With these tasks accomplished, an ILEC is still handicapped in deploying advanced services by pricing, tariffing and other regulatory requirements, in addition to interLATA restrictions that bar the BOCs from providing advanced end-to-end networking services such as frame relay and ATM across LATA boundaries.

Because advanced services cross conventional industry and regulatory lines, market participants currently face disparate levels of regulation, but for no rational reason. As the Commission has already acknowledged,[4] no entrant dominates the advanced services market, thus no class of competitors should be subject to arduous regulation designed to protect against an abuse of market power. An ILEC's ownership of local exchange facilities awards it no competitive advantage in providing advanced services, particularly as its local exchange facilities are subject to mandatory unbundling and resale obligations. In fact, the cable industry, not the ILECs, enjoys the greatest share of the advanced access market, and long-distance carriers have a clear advantage in the advanced networking services market. Subjecting ILECs – or any broadband suppliers, for that matter – to cumbersome regulatory requirements for advanced services is unnecessary and only thwarts their full participation in the market, inhibits their incentive to develop innovative service offerings, encumbers their ability to respond to shifting market conditions, and ultimately delays widescale deployment and increases the cost of advanced services for consumers.

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[4] *See In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Dkt. No. 98-146, *Report*, 14 FCC Rcd 2398 (1999) ("*Advanced Services Report*").

The economic similarities of ILECs and cable companies are significant. The services that ILECs and cable modem providers are marketing are both directed toward the mass market. Each has an existing customer base and an existing network. Both are new entrants into the advanced services market and therefore neither is dominant, even though cable modem providers have a clear lead on the number of customers. Both have made large investments in their networks and have considerable resources to devote to deployment.

With these striking similarities one would assume that these entities would be allowed to compete on a level regulatory playing field. Nothing could be further from the truth, however. The regulatory disparities are stark and overwhelming. ILECs are prohibited from providing advanced services across a LATA boundary; cable modem providers are not. ILECs' services are subject to price regulation. ILECs must file tariffs with the Commission to establish the rates, terms and conditions under which they deal with their customers; cable modem providers do not. ILECs must, under certain circumstances, unbundle their network for competitors to use to provide advanced services;[5] cable modem providers bear no such obligation. ILECs must allow competitors to collocate on their premises; again, cable modem providers bear no such obligation. ILECs must allow access to the loop facilities on a shared basis with their competitors; cable modem providers do not.

As part of Section 706 of the Telecommunications Act of 1996 ("1996 Act"), Congress required the Commission to undertake this comprehensive examination of the "availability of

[5] The Commission established certain circumstances when an ILEC must unbundle its packet switching network elements including the digital subscriber line access multiplexer ("DSLAM"). The test to determine when unbundling must occur is set forth in paragraph 313 of the *UNE Remand Order*.

advanced telecommunications capability to all Americans." The Commission's mandate is explicit – if the deployment of advanced services is not progressing in a reasonable and timely fashion to all potential users, the Commission *must take immediate* action to accelerate deployment of advanced services by removing regulatory restraints that chill advanced services investment and inhibit competition. The most powerful incentive for accelerating deployment of advanced telecommunications capability to all Americans is consumer demand. Competition in the advanced services marketplace needs no regulatory surrogate. Numerous participants are offering advanced services using innovative, competing technologies, and no supplier can unilaterally exercise market power. The solution, therefore, is not to impose Title II regulation on cable operators or other broadband providers, but instead, to eliminate regulation of advanced services for all providers. With reasonably competitive conditions, "the market achieves economically efficient use of resources more quickly and more reliably than government regulation." To stimulate innovation and investment in advanced services infrastructure, as Congress prescribed, the Commission must eliminate artificial constraints on some competitors. This act would permit the developing marketplace to select the technologies and service providers that best meet consumer demand.

There are many things that the Commission could do today, without legislation, to equal the disparity among advanced service providers. First, the Commission should recognize that ILEC property is private property. Accordingly, it should be conscientious about assuring just compensation for mandated uses, such as unbundled network elements ("UNEs") to competitors. It should also assure recovery of costs incurred to accommodate competitors, *e.g.,* collocation. Second the Commission should recognize that broadband investment is new investment for both ILECs and CLECs. Therefore, it should not transfer CLEC business risks to ILECs and, if

unbundling is required, the Commission should allow the ILEC to recover "reasonable profit" including recognition of risk and provisioning of investment incentives. Third, the Commission should not require unbundling of advanced services equipment or collocation in Remote Terminals. Finally, the Commission should eliminate tariff/rate regulation of advanced services without any conditions not also applicable to cable companies. Implementation of these changes will go a long way equalizing competition in the advanced services market.

B. Definition of Advanced Services Capability

The *NOI* seeks comments on whether the existing definition of advanced services should be changed. Specifically the *NOI* asks whether both the originating and receiving paths must be the same bandwidth. BellSouth strongly supports the Commission's existing definition of advanced services. As the Commission knows, many existing technologies have synchronous and asynchronous capabilities and both are being deployed in a ubiquitous manner. It would only confuse the industry and fail to give the Commission a clear picture of deployment to change definitions now. The Commission should therefore continue with its current definition.

C. Benchmarking

The Commission seeks relevant benchmarks to assess whether the deployment of advanced services to all Americans is proceeding in a reasonable and timely manner. BellSouth supports the goal of timely deployment of advanced services capability to all Americans. However, the Commission needs to defer from premature regulatory intervention when there is ample evidence of numerous investment and deployment commitments for advanced services such as Internet access over competing media such as cable, wireline and wireless. The Commission should be cautious about reaching any determination that the economic incentives

within the competitive market process are unresponsive to consumers' demand for advanced services.

In the *Advanced Services Report* the Commission compared data about advanced services capabilities with data about other consumer electronic technologies at early stages in their commercial lives to judge whether deployment was taking place on a reasonable and timely basis. The technologies it used for these benchmarks were the telephone, the black and white television, the color television, and the cellular telephone. In the *NOI* the Commission asks whether four different consumer products – video cassette tape players, compact disc players, direct broadcast satellite service, and radios – would be more appropriate benchmarks for comparison to determine if deployment is reasonable and timely. BellSouth supports using objective market-based indicia to assess the state of progress of broadband service deployment. All of the eight benchmarks presented in the *NOI*, however, cannot be directly applied as deployment indicators across all market substrata, *e.g.*, income or other demographics, or by sub-geographies such as rural, suburban, urban, inner city, etc. BellSouth does not argue against progress assessment by market strata, but contends that national aggregate market deployment results cannot function as a uniform benchmark within sub-markets.

Studies of new technologies have demonstrated that technology deployment is not uniform either in its early or subsequent phases. A prime illustration is the home computer market.[6] A Bureau of Census survey indicated that 8.2% of all households in the United States

[6] Home computers appear particularly relevant to this inquiry because they are complementary to the use of residential advanced telecommunications capabilities, which is a focus of the *NOI*. Additionally, the penetration progress of home computers is a development in the most recent two decades, so it is more current than the experience with VCRs, radios, and television.

reported having a home computer in October 1984.[7] This was determined from 6,980,000 households with a home computer out of a total base of 85,122,000 households. A further breakdown of the data revealed that households with a computer were skewed significantly toward higher income homes than in lower – 22.9% of households with income over $50,000, while only 1.7% with incomes below $10,000 had computers.[8]

Significantly, the Census Bureau Report revealed that 70% of the 6,980,000 households that owned home computers in 1984 had purchased their home computer since 1983. Thus, approximately only 30% of the 6,980,000 households, or 2,094,000 households, had home computers by 1982. Comparing the 2,094,000 households against the 1984 total household base of 85,122,000 suggests that home computer penetration in 1982 was below 3%. Presumably, 1982 was already beyond the third year of the availability of home computers, inasmuch as this report states "By the late 1970s' several different brands of microcomputers were commercially available."[9]

A second report[10] acknowledges the 8.2% penetration rate for home computers in 1984 and indicates the penetration rate was 15% in 1989. This report presents tables with the distribution of home computer penetration by several strata. Among other things, this report indicates "...ownership was strongly related to household income...[and that] even more interesting patterns of access and use are apparent across other dimensions." These patterns

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7 *Computer Use in the United States: 1984*, Current Population Reports, Special Studies, Series P-23 No. 155, Bureau of the Census, US Dept. of Commerce, issued March, 1998

8 *Id.* page 1

9 *Id.*

10 *Computer Use in the United States: the Bureau of the Census Surveys*, Robert Kominski, Population Division, US Bureau of the Census. Presented at the 1992 annual Meeting of the American Society for Information Science, October 26-29, 1992, Pittsburgh, PA

were further identified in a third study,[11] which reported "while ownership has increased for all groups, certain characteristics continue to be strong determinants of the rate of growth and of a households' likelihood of having a computer. Income, race, and education level, for example, continue to closely correspond with the computer penetration rate."[12]

If the Commission focuses on the deployment progress of advanced services, such as high speed Internet access, to consumer market strata, it needs to consider that economically feasible, competitive market-based penetration progresses differentially. Aggregate national service penetration statistics cannot be directly or uniformly applied. To do so might yield results that indicate a need for regulatory intervention which would interfere with the pace of market deployment based on business economics. Regulation to make these submarkets keep pace with the national average penetration rate will be counter to past market deployment patterns.

Finally, as a matter of review for rural areas, the Commission must be mindful that early stages of technology plays an important role in deployment. For example, ADSL currently has a range of about 12,000 to 18,000 feet. Obviously, many rural customers are beyond that range. Thus, slower deployment to rural areas does not create a regulatory problem, but a technology issue. Advancement of technology will no doubt increase deployment in these areas as more and greater capabilities are introduced into the marketplace.

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[11] *Falling through the Net: Defining the Digital Divide*, A Report on the telecommunications and Information Technology Gap in America, July, 1999, National Telecommunications and Information Administration, US Dept. of Commerce.

[12] *Id.* page 83

D. Universal Service

The *NOI* also seeks comment on the relationship that section 706 bears to universal service provisions. BellSouth believes that all issues related to universal service are best addressed in the universal service docket and by the Federal-State Joint Board. The Joint Board is a body designated to consider whether, and if so when, advanced services must be made available throughout the United States under universal service principles. It is guided by principles set forth in Section 254.[13] These principles are wider in scope than those expressed in Section 706. Section 706 merely tells the Commission how it should use its powers to bring those services to people and institutions of learning. Accordingly, issues related to universal service should remain with the Joint Board.

III. Conclusion

The Commission should work toward policies that will impact rapid growth in advanced telecommunications capabilities. Rapid growth is needed to fuel the growth of the Internet and its positive impact on the economy. Such polices will be best achieved by competition in the

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[13] *See* 47 U.S.C. § 254.

market and not past regulatory models. The Commission should be bold in letting fairly matched providers compete going forward on equal terms.

Respectfully submitted,

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Date: March 20, 2000

CERTIFICATE OF SERVICE

I do hereby certify that I have this 20th day of March, 2000, served the following parties to this action with a copy of the foregoing ***COMMENTS OF BELLSOUTH CORPORATION***, reference CC Docket No. 98-146, by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below:

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